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September 19, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: XO Communications, Inc.
Applications for Consent to Transfer of Control
IB Docket No. 02-50

Public Version

Dear Ms. Dortch:

On behalf of Forstmann Little & Co. Equity Partnership-VII, L.P. ("Equity VII") and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P. ("MBO VIII," and, together with Equity VII, "Forstmann Little"), and pursuant to 47 C.F.R. §§ 0.457 and 0.459 of the Commission's rules, attached please find the redacted version of Forstmann Little's response to the International Bureau's September 10, 2002 request for additional information regarding the applications captioned above. The following paragraphs respectfully request confidential treatment of certain proprietary information contained in the confidential version of Forstmann Little's response to the September 10, 2002 information request, which is being filed simultaneously under separate cover letter.

Background

In connection with its consideration of the above-referenced applications, the International Bureau, by letter dated September 10, 2002, requested that Forstmann Little provide certain information in two parts, due September 13 and September 20, respectively. First, the staff requested Forstmann Little to (i) confirm that the partnership agreement prohibits the limited partners from participating in the day-to-day management of the partnership; and (ii) provide the aggregate percentage of ownership of the foreign limited partners in each partnership.¹ Second, no later than Friday, September 20, Forstmann Little is to provide, for each foreign limited partner, the citizenship of any individual foreign limited partners and the "principal place of business" of any corporate or other institutional foreign limited partners. Because of the sensitive nature of the identities of its foreign limited partners,

¹ The information due September 13, 2002 was filed with the FCC on that date.

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Forstmann Little files the instant request for confidential treatment to ensure that its proprietary commercial and financial information is not disclosed to the public.

The Information Forstmann Little Seeks to Withhold from Public Disclosure is Exempt from Disclosure under FOIA Exemption 4.

The information that Forstmann Little seeks to withhold from public disclosure is proprietary commercial and financial information that is routinely withheld from public disclosure. Under Section 0.459 of the Commission's rules, parties whose confidential information is submitted to the Commission are permitted to file a request that the information not be disclosed to the public. If that information may be withheld by the agency pursuant to an exemption of the Freedom of Information Act, 5 U.S.C. § 522(b)(4), the FCC's rules require that the information remain confidential.

Exemption 4 of the FOIA requires a federal agency to withhold from public disclosure confidential commercial and financial information of a person unless there is an overriding public interest requiring disclosure. *National Parks v. Morton* established a two-part test for determining if information qualifies for withholding under Exemption 4.² The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong then it is exempted from disclosure under Exemption 4. Once information is found to qualify for Exemption 4, the FCC cannot disclose the confidential commercial or financial information unless there is "a compelling public interest in disclosure outweigh[ing] any interests in confidentiality."³

Under the competitive harm prong of the test, information should be withheld if it is typically withheld by a company and risks harming the competitive position of the person whose information has been provided to the agency. Obtaining investors

² *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

³ *Classical Radio for Connecticut, Inc.*, 69 FCC Rcd 1517 (1978); *Western Union Telegraph Co.*, 2 FCC Rcd 4485 (1987).

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willing to participate in investment funds, such as the Forstmann Little funds, is a highly competitive business. The identity of investors willing to participate in such funds, therefore, is highly valuable information. Accordingly, Forstmann Little customarily guards the information from its competitors. Courts ordinarily presume that such commercially sensitive information that is not disclosed to the public qualifies as confidential.⁴ Forcing investment funds routinely to disclose this information could cause them to refrain from investing in companies subject to potential disclosure obligations.

Under the impairment prong, commercial and financial information is not disclosed if the agency determines that disclosure is likely to impair its ability to obtain necessary information in future proceedings. As noted above, the information for which confidentiality is requested includes the identities and interests (voting and equity) of the foreign limited partners of certain Forstmann Little partnerships involved in the proposed investment in XO. Because investors in private equity firms generally expect that their investments will not be disclosed to the public, public disclosure of their investments could discourage such investors from investing in private equity firms, which, in turn, could similarly deter the private equity community's desire to invest in the telecom sector. Therefore, disclosure of detailed data about the Forstmann Little foreign limited partners is likely to impair the Commission's ability to obtain such commercial and financial information in the future.

Conclusion

For all the foregoing reasons, Forstmann Little requests that the FCC withhold from public disclosure pursuant to Section 0.459(a) of the Commission's rules the proprietary commercial and financial information contained in its responses to certain parts of the September 10, 2002 request for additional information. Forstmann Little does not object to releasing a redacted copy of its responses omitting this confidential information.⁵ If the Commission is unable for any reason

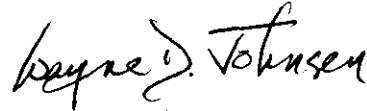
⁴ *Critical Mass Energy Project v. Nuclear Regulatory Comm'n.*, 975 F.2d 871, 879 D.C. Cir. (1992) ("*Critical Mass*"). This presumption is only overcome where there is an overriding interest justifying disclosure. See page 2, *supra*. Forstmann Little submits that there is no compelling public interest in releasing to the public the names of the Forstmann Little foreign limited partners and that the Commission, at least as an initial matter, can complete its evaluation of Forstmann Little's ownership without such disclosure.

⁵ A redacted version of the pleading is being filed under separate cover.

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to keep this voluntarily provided proprietary information confidential, Forstmann Little respectfully requests that the Commission return the unredacted copy of the report to it pursuant to Section 0.459(e) of its rules. In such event, Forstmann Little would be willing to enter into discussions with Commission staff regarding the possibility of provided limited access to this sensitive information pursuant to a protective order, as contemplated in the Commission's 1998 order concerning the treatment of confidential information.⁶

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wayne D. Johnsen". The signature is written in a cursive, flowing style.

Wayne D. Johnsen
John F. Papandrea

Counsel for Forstmann Little & Co.
Equity Partnership-VII, L.P. and
Forstmann Little & Co. Subordinated
Debt and Equity Management Buyout
Partnership-VIII, L.P.

⁶ See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, 13 FCC Rcd 24816 (August 4, 1998), ¶ 34.



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Dear Ms. Dortch:

Forstmann Little & Co. Equity Partnership-VII, L.P. ("Equity VII") and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P. ("MBO VIII," and, together with Equity VII, "Forstmann Little"), by their attorneys, hereby respond to question 3 of the International Bureau's September 10, 2002 request for further information regarding the Forstmann Little limited partners:¹

"3. As soon as possible, but no later than September 20, 2002, please provide, for each foreign limited partner in each partnership, the citizenship of any individual limited partners, and the principal place of business of any corporate or other institutional limited partners."

As explained in the September 13 Letter, under the terms of the transaction contemplated in the above-referenced applications, Equity VII would hold 25 percent of the voting stock of XO, and MBO VIII would hold 15 percent of the voting stock of XO.

¹ On September 13, 2002, Forstmann Little filed its response to questions 1 and 2 of the International Bureau's September 10, 2002 information request. See Letter from Wayne D. Johnsen, Wiley Rein & Fielding LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. IB Docket 02-50 (Sept. 13, 2002) ("September 13 Letter").

Equity VII. The foreign limited partners of Equity VII, which collectively have an 11.32 percent ownership stake in the fund,² are: [REDACTED].

MBO VIII. The foreign limited partners in MBO VIII are: [REDACTED]. Collectively, these entities have a 14.8 percent interest in MBO VIII.³

Principal Place of Business of Foreign Limited Partners. The FCC has adopted a strong presumption that indirect foreign ownership of Commission licensees by entities whose home markets are in WTO member countries serves the public interest.⁴ In determining the principal place of business or home market of an entity for purposes of evaluating foreign ownership under Section 310(b) of the Communications Act, the FCC looks at five factors: (1) the place of incorporation; (2) the location of the company's headquarters; (3) the country from which the company derives the greatest sales and revenues for its operations; (4) the country in which the majority of the company's tangible property is located; and (5) the nationality of the investment principals, officers, and directors.⁵ As detailed below, although the foreign limited partners in Equity VII and MBO VIII have operations in, and derive revenues from, a number of countries, each limited partner's predominant ties are to WTO member countries.

² Ownership percentages disclosed herein are based on percentage of equity paid in to the partnership. While a limited partner's percentage of the partnership's profits and losses is not necessarily the same as the percentage of equity paid in, it does not exceed this percentage.

³ Using the multiplier, the total ownership interest that the Equity VII and MBO VIII foreign limited partners would be deemed to hold in XO under the terms of the transactions contemplated by the instant applications would be 5 percent. This figure can be obtained as follows: (1) For Equity VII: 11.32 percent (ownership stake of foreign limited partners in Equity VII) multiplied by 25 percent (proposed stake of Equity VII in XO) equals 2.8 percent; (2) For MBO VIII: 14.8 percent (ownership stake of foreign limited partners in MBO VIII) multiplied by 15 percent (proposed stake of MBO VIII in XO) equals 2.2 percent.

⁴ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market and Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891, 23940 (1997) ("Foreign Participation Order").

⁵ *Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3951-52 (1995).

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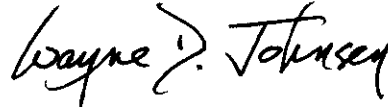
Public Version

The following section provides a brief overview of each foreign limited partner using the Commission's principal place of business factors:⁶

[REDACTED]

Please do not hesitate to contact us if additional information or clarification is required.

Respectfully submitted,

A handwritten signature in black ink that reads "Wayne D. Johnsen". The signature is written in a cursive, flowing style.

Wayne D. Johnsen
John F. Papandrea

Counsel for Forstmann Little & Co.
Equity Partnership-VII, L.P. and
Forstmann Little & Co. Subordinated
Debt and Equity Management Buyout
Partnership-VIII, L.P.

cc: Jim Ball
Susan O'Connell
Breck Blalock
George Li
Claudia Fox
Jackie Ruff
Mark Uretsky
Imani Ellis-Clark
Jeff Tobias
Zenji Nakazawa
Elizabeth Yockus
Neil Dellar

⁶ Certain information in this response was provided to Forstmann Little by certain foreign limited partners in response to Forstmann Little inquiries. Other information was garnered from publicly available sources, such as websites and Dunn & Bradstreet reports.

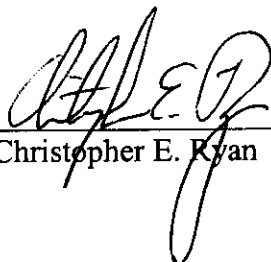
CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant at the law firm of Wiley Rein & Fielding LLP, do hereby certify that on September 19, 2002, I served the following party with the foregoing Forstmann Little & Co. letter, dated September 19, 2002, filed with the Federal Communications Commission in IB Docket No. 02-50, by the means indicated below:

Via U.S. Mail (first class, postage pre-paid):

Scott Burnside *
RCN Corporation
100 Lake Street
Dallas, PA 18612

**Served only the public version of the foregoing submission.*



Christopher E. Ryan